IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1881 OF 2007.

M/s.Gambhir Cement Pipe Company Pvt.Ltd. ... Petitioner.
Versus.
The Kalyan Janata Sahakari Bank Ltd. and others. ... Respondents.

Shri Uday P.Warunjikar for the Petitioner.

Shri R.C.Dhuru for the Respondents Nos.1 and 2.

Mrs.Vaidehi Mhaispurkar, A.G.P. for Respondents Nos.3 and 4.

CORAM : ABHAY S.OKA, J.

DATED : 13th April, 2007.

P.C.:

1. Rule. The learned Advocate for the 1st and 2nd Respondents waives service. The learned A.G.P. waives service for the 3rd and 4th Respondents. Taken up for hearing forthwith.

2. On an application made by the 1st Respondent-Bank, the Assistant Registrar of Cooperative Societies, Taluka Wada, District Thane issued a recovery certificate under section 101 of the Maharashtra Cooperative Societies Act, 1960 (hereinafter referred to as "the said Act of 1960") against the Petitioner and others for recovery of a sum of Rs.34,18,362/- with interest. The Petitioner preferred a Revision

Application under section 154 of the said Act of 1960 before the Divisional Joint Registrar. The said Revision Application was rejected by the Divisional Joint Registrar by order dated 22nd February 2007 on the ground that the Petitioner has not complied with the statutory requirement of deposit under sub-section (2A) of section 154 of the said Act of 1960. On the basis of the said certificate under section 101 of the said Act of 1960, the 2nd Respondent attached the immoveable and moveable properties of the Petitioner.

3. On 21st March 2007, this Court (Coram: S.K.Shah, J.) issued notice to the Respondents and granted ad-interim relief in terms of prayer clause (c) subject to the Petitioner depositing with the Respondent No.1-Bank 50% of the amount due and payable on or before 5th April 2007. Prayer clause (c) of the petition reads thus:

> (c) Ad-interimrelief in terms of prayer clause (b) be granted.

Prayer clause (b) reads thus:

> (b) During the pendency of the said Writ Petition, this Hon'ble Court be pleased to grant stay to the effect, operation and

implementation of the order passed by the Divisional Joint Registrar under section 154 of the Maharashtra Cooperative Societies Act, dated 22nd February 2006 and order passed by the learned Assistant Registrar on 1.12.2006 and possession note from Special Recovery Officer dated 26.2.2006 and be pleased to allow the Petitioner to restart the manufacturing activity on such terms and conditions as this Hon'ble Court deems fit and proper and be pleased to stay the auction process initiated by Respondents Nos.1 and 2.

4. There is a controversy between the parties as to whether the Petitioner has deposited 50% of the amount due and payable under the Recovery Certificate as on 21st March 2007. According to the Petitioner the deposit of Rs.18 lakhs admittedly made by the Petitioner with the 1st Respondent constitutes more than 50% of the amount due. According to the case of the 1st Respondent, there is a shortfall of Rs.2,76,000/- and if the said amount of Rs.2,76,000/- is paid, there will be compliance with the order dated 21st March 2007 passed by this Court.

5. The Petitioner has filed an undertaking of its

Director. In the said undertaking in paragraphs Nos.2 to 4, he has stated thus :

2. I say that however the respondent No.1 and 2 have contended that the said payment is not sufficient to hold that an amount of 50% is deposited by me and have contended that there is a shortfall of Rs.2,76,000/- (Rupees Two lacs Seventy six thousand only).

3. I say that the petitioner is disputing and denying the same. However without prejudice to the rights and contentions the petitioner is ready and willing to deposit the same with the Bank.

4. Accordingly I say that an amount of Rs.50,000/- (Rupees Fifty thousand only) the Petitioner shall deposit on 13th April 2007 with the Respondent No.1. Accordingly upon payment of the said amount the Respondent Nos.1 and 2 be directed to open the seal and lift the attachment of the factory and manufacturing unit of the petitioner. The Petitioner undertake to pay the balance amount of Rs.2,26,000/-

(Rupees Two lacs Twenty Six Thousand only) within one week from today i.e. 12th April 2007."

6. After hearing the learned Advocate appearing for the parties, I find that in view of the aforesaid undertaking, the petition can be disposed without entering into the merits of the recovery certificate issued in favour of the 1st Respondent. The undertaking of the Petitioner dated 12th April 2007 is accepted.

7. In view of the undertaking, if the Petitioner has deposited the said sum of Rs.50,000/- with the 1st Respondent today, the 1st and 2nd Respondents will remove the seal on the premises and manufacturing unit in question of the Petitioner and will permit the Petitioner to restart his usual activities. In view of the deposit of 50% of the amount, now the Revision Application can be restored with liberty to the Petitioner to take out appropriate application for grant of appropriate interim relief.

8. Hence the writ petition is disposed of by passing the following order:

(i) Undertaking dated 12th April 2007 of the Petitioner is accepted.

(ii) If the Petitioner has deposited the sum of Rs.50,000/- with the 1st Respondent today, the 1st and 2nd Respondents will remove the seal on the premises and the manufacturing unit of the petitioner and will permit the Petitioner to resume usual activities.

(iii) If the compliance is not made with the undertaking dated 12th April 2007 within the time stipulated therein, it will be open for the 1st and 2nd Respondents to re-seal the premises and the manufacturing unit.

(iv) If compliance is made with the undertaking by depositing a sum of Rs.1,76,000/-, in view of the deposit of the 50% of the amount payable under the recovery certificate by the Petitioner with the 1st Respondent, the Revision Application preferred by the Petitioner before the Divisional Joint Registrar of Cooperative Societies, Konkan Division, Konkan Bhavan, Navi Mumbai will stand restored. In such event, it will be open for the Petitioner

to apply for appropriate interim relief in the said Revision Application. The Revision Application shall be decided as expeditiously as possible and preferably within a period of four months from the date of production of an authenticated copy of this order.

(v) If the deposit of the amount is not made by the Petitioner as aforesaid, the order of dismissal of the Revision Application will stand.

(vi) It is made clear that the deposit of the amount by the Petitioner and the acceptance thereof by the 1st Respondent will be without prejudice to the rights and contentions of the parties in the pending Revision Application.

(vii) All contentions in the pending Revision Application are expressly kept open.

(viii) Writ Petition is partly allowed in the above terms with no order as to costs.

(xi) All concerned to act on an authenticated

copy of this order.

Judge.